

37 Am. Jur. 2d Fraud and Deceit § 87

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Fraud and Deceit

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IV. False Representations

C. Matters of Futurity; Promises and Statements of Intention

2. Promises and Statements of Intention

a. In General

§ 87. General rule of nonliability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  12

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[Employer's misrepresentation as to prospect, or duration of, employment as actionable fraud, 24 A.L.R.3d 1412](#)

Subject to certain exceptions and qualifications,¹ the general rule is that mere unfulfilled promises to do a particular thing in the future do not constitute fraud in and of themselves.² Thus, fraud cannot be predicated upon the mere nonperformance of a promise or contractual obligation,³ or upon failure to fulfill an agreement to do something at a future time⁴ or to make good subsequent conditions which have been assured.⁵ Such nonperformance alone has frequently been held not even to constitute evidence of fraud.⁶

Observation:

Reasons given for the rule not permitting predication of fraud on promises that are merely unkept subsequently are that a mere promise to perform an act in the future is not, in a legal sense, a representation⁷ or statement of existing or past fact,⁸ and a person has no right to rely on such a promise or statement.⁹ A mere failure to perform a promise does not change its character.¹⁰ Moreover, a representation that something will be done in the future,¹¹ or a promise to do it,¹² cannot, from its nature, be true or false at the time when it is made. The failure to make it good is merely a breach of contract, which must be remedied by an action on the contract, if at all.¹³

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Footnotes

- ¹ §§ 89 to 92.
- ² *Hart v. Bayer Corp.*, 199 F.3d 239 (5th Cir. 2000) (applying Mississippi law); *Cook v. Little Caesar Enterprises, Inc.*, 210 F.3d 653, 2000 FED App. 0147P (6th Cir. 2000) (applying Michigan law); *Trade Finance Partners, LLC v. AAR Corp.*, 573 F.3d 401 (7th Cir. 2009) (applying New York law); *Futch v. Lowndes County*, 297 Ga. App. 308, 676 S.E.2d 892 (2009); *Ira G. Steffy & Son, Inc. v. Citizens Bank of Pennsylvania*, 2010 PA Super 175, 7 A.3d 278 (2010), appeal denied, 27 A.3d 1015 (Pa. 2011); *Supervalu, Inc. v. Johnson*, 276 Va. 356, 666 S.E.2d 335 (2008).
- ³ *OHM Remediation Services Corp. v. Hughes Environmental Systems, Inc.*, 952 F. Supp. 120 (N.D. N.Y. 1997) (applying New York law); *Yield Dynamics, Inc. v. TEA Systems Corp.*, 154 Cal. App. 4th 547, 66 Cal. Rptr. 3d 1 (6th Dist. 2007), as modified on denial of reh'g, (Sept. 21, 2007); *Adams v. G.J. Creel and Sons, Inc.*, 320 S.C. 274, 465 S.E.2d 84 (1995); *Kajima Intern., Inc. v. Formosa Plastics Corp., USA*, 15 S.W.3d 289 (Tex. App. Corpus Christi 2000) (noting that otherwise, every breach of contract would amount to fraud).
- ⁴ *Citizens Nat. Bank of Glasgow v. Damron*, 286 Ky. 43, 149 S.W.2d 762 (1941); *Howard v. Reaume*, 310 Mich. 119, 16 N.W.2d 686 (1944); *Farmers Union Co-op. Royalty Co. v. Southward*, 1938 OK 237, 183 Okla. 402, 82 P.2d 819 (1938).
- ⁵ *Mario's Pizzeria, Inc. v. Federal Sign & Signal Corp.*, 379 S.W.2d 736 (Ky. 1964); *Credit Indus. Co. v. Adams County Lumber & Supply Co.*, 215 Miss. 282, 60 So. 2d 790 (1952); *Alms & Doepke Co. v. Young*, 20 Ohio L. Abs. 325, 1935 WL 1910 (Ct. App. 1st Dist. Hamilton County 1935).
- ⁶ § 490.
- ⁷ *Howard v. Reaume*, 310 Mich. 119, 16 N.W.2d 686 (1944); *Blow v. Indemnity Ins. Co. of North America*, 66 S.W.2d 469 (Tex. Civ. App. Beaumont 1933).
- ⁸ *Citizens Nat. Bank of Glasgow v. Damron*, 286 Ky. 43, 149 S.W.2d 762 (1941).
- ⁹ § 252.
- ¹⁰ *Credit Indus. Co. v. Adams County Lumber & Supply Co.*, 215 Miss. 282, 60 So. 2d 790 (1952).
- ¹¹ *Colorado Milling & Elevator Co. v. Rapides Grocery Co.*, 142 So. 626 (La. Ct. App. 2d Cir. 1932); *Alms & Doepke Co. v. Young*, 20 Ohio L. Abs. 325, 1935 WL 1910 (Ct. App. 1st Dist. Hamilton County 1935).
- ¹² *Turner Elkhorn Coal Co. v. Smith*, 239 Ky. 428, 39 S.W.2d 649 (1931); *Soble v. Herman*, 175 Va. 489, 9 S.E.2d 459 (1940).
- ¹³ *Tom Hughes Marine, Inc. v. American Honda Motor Co., Inc.*, 219 F.3d 321 (4th Cir. 2000) (applying South Carolina law); *Appel v. Hupfield*, 198 Md. 374, 84 A.2d 94 (1951).

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